



RULING FOLLOWING THE MODULE 3 PRELIMINARY HEARING ON 27 SEPTEMBER 2023

Background

1. On 27 September 2023 I held the second Preliminary Hearing in relation to Module 3 of this Inquiry.
2. Prior to the hearing, 18 of the 36 designated Core Participant groups filed written submissions (one was a joint submission) and oral submissions were made during the hearing on behalf of 18 of the Core Participant groups. I am very grateful to all those who addressed me, whether in writing or orally, for the obvious care they took in making their submissions. I have considered the matters raised with equal care. I have already directed that the written submissions be published on the Inquiry's website.
3. In this ruling I set out my decisions on those issues that I consider require determination.

Scope of Module 3

4. In relation to scope, I heard two submissions about the extent to which Module 3 overlaps with the Inquiry's other Modules.
5. The Clinically Vulnerable Families Core Participant group made submissions relating to the overlap between Module 3 and Module 4 (vaccines and therapeutics) and the extent to which each Module was examining the use of therapeutics. This was also raised during the Module 4 preliminary hearing on 13 September 2023.

6. As set out in my Ruling following the Module 4 hearing (“the Module 4 Ruling”), Module 3 will be examining the impact of the pandemic on healthcare systems, including healthcare provision and treatment for patients with Covid-19. The use of therapeutic drugs to treat patients suffering with Covid-19 will therefore be examined, alongside other modes of treatment/care such as ‘proning’ and the use of mechanical ventilation. Module 4, on the other hand, will focus on the development and trials of new therapeutics and repurposed medications, as well as decision-making on eligibility at a national level. In my Module 4 Ruling, I confirmed that the Provisional Outline of Scope for Module 4 will be amended to make this division clearer. Paragraph 2 of the Provisional Outline of Scope for that Module will now read “*The development, trials and steps taken to enable the use of new therapeutics and repurposed medications during the pandemic.*” In other words, Module 4 will focus on therapeutics up to the point of use and Module 3 will examine the use of therapeutics. I will keep this area of overlap under review and know that the legal teams for both Modules are working together to ensure that nothing falls between the gap and therapeutics are appropriately investigated.

7. The John’s Campaign, Care Rights UK and the Patients Association Core Participant group submitted that there will be inevitable overlap between Module 3 and Module 6. Module 6 will examine the impact of the pandemic on the care sector. They submit that the role of unpaid carers and healthcare provided at home (whether in a private home or a residential setting such as a nursing or residential home) should be considered within Module 3 and that the Inquiry should take a “*holistic*” and “*integrated*” approach to health services and social care. They submit that the Inquiry should delay publishing its reports following both modules so that evidence from them can inform both reports.

8. Module 6 is due to open on 12 December 2023 and the provisional outline of scope will be published then. I can, however, indicate at this stage that I consider it more appropriate for care and healthcare in the home, including that provided by unpaid carers, to be examined in Module 6. In accordance with my intention of running the Inquiry as efficiently and thoroughly as possible and my intention to publish regular reports and make timely recommendations, I think it unlikely that I will delay the publication of the Module 3 report until the conclusion of the Module 6 hearing because that would delay the implementation of any recommendations I make as a

result of hearing evidence in Module 3. However, I will keep the overlap between Modules 3 and 6 and these submissions firmly in mind and I will review this topic once I have considered the evidence in Module 3.

Rule 9 requests

9. I note the good progress made by Module 3 in issuing Rule 9 requests to relevant institutions, organisations and individuals, finalising the statements provided in draft, and the disclosure generated by those requests. Like a number of Core Participants, I was disappointed to hear that several recipients of Rule 9 requests had missed extended deadlines for the provision of statements where those requests were made many months ago. In particular I am concerned about the impact delay may have on the ability of Module 3 to progress its work, the impact on other Modules and the potential this has to derail the Inquiry's overall timetable. I will consider issuing notices pursuant to s.21 Inquiries Act 2005 requiring the evidence to be provided within a specified time where appropriate and necessary.

Experts

10. A number of Core Participants identified additional areas where the Inquiry might be assisted by expert evidence. I will keep the need for expert evidence under review but it is not possible or practical to instruct an expert in relation to every area within the scope of Module 3. I also bear in mind my obligation under section 17(3) of the Inquiries Act 2005 to minimise cost to the public. I heard submissions to instruct experts to examine the following matters:
 - a. Northern Ireland Covid-19 Bereaved Families for Justice submitted that an expert should be instructed to consider the structure of Northern Ireland's health and social care system. At present, I do not consider this necessary. Module 3 is already gathering evidence about the structure of the health and social care system in Northern Ireland and there may also be evidence given on this in the Module 2C (key decision making and governance in Northern Ireland) hearings. In addition, the experts who have already been instructed have all been asked to include evidence and comment relating to all four nations. I should add that where the Inquiry is requesting data on healthcare

systems, the Inquiry is taking steps to secure the equivalent data from all four nations. In the event that an expert feels unable to comment on any of the four nations then the Inquiry will consider whether further expert evidence is required.

- b. The 13 Pregnancy, Baby and Parent Organisations Core Participant group submitted that the Inquiry should instruct an expert on antenatal, intrapartum and postnatal care during the pandemic and maternal deaths. At present, I do not consider that expert evidence on these areas is necessary. The Inquiry is gathering evidence in relation to these topics and is aware of a number of relevant reports that can assist the Inquiry in its work.
- c. The Trades Union Congress submitted that the Inquiry should instruct an expert statistician to assist in the interpretation and analysis of data relating to deaths of healthcare staff. The Inquiry is already gathering data relating to deaths, not just of healthcare staff but also patients and is considering how best to present this evidence. I will therefore keep this request under review.

11. I have also considered the request to reissue letters of instruction to the inequalities experts who have provided reports to Module 2 and the request that they provide additional reports relevant to matters within Module 3's scope. I note that those experts are likely to be giving evidence at the upcoming Module 2 hearings and so I consider that at this stage it is neither necessary nor proportionate to re-issue such letters or seek additional reports or addenda but I will keep this matter under review.

Non Covid-19 conditions to be examined

12. Module 3 will be examining the impact of the pandemic on healthcare for conditions other than Covid-19 by focussing on four conditions or healthcare services namely ischaemic (coronary) heart disease, colorectal cancer, elective hip replacement surgery and inpatient Children and Adolescent Mental Health Services (now referred to as Children and Young People's Mental Health Services).
13. Mind submitted that Module 3 should consider the impact of the pandemic on wider mental health services and not just look at inpatient psychiatric care provided to children. The impact on the mental health of the population is a matter within the Inquiry's Terms of Reference and so I wish to give this submission further

consideration, not least as to which area or Module of the Inquiry's work is best placed to examine these matters.

14. The John's Campaign, Care Rights UK and the Patients Association Core Participant group submitted that dementia should be added as one of the conditions other than Covid-19 to be examined. Given the already wide scope of Module 3 I do not propose to add dementia to this aspect of Module 3's work. I will however consider whether to include an examination of dementia within later Modules.

Provisional List of Issues

15. In advance of this preliminary hearing, Module 3 shared its first draft of the Provisional List of Issues that Module 3 proposes to explore in detail. I am grateful for the realistic submissions made by the Core Participants acknowledging that this is an initial draft List which will be refined and developed as the evidence gathering process progresses. I will carefully consider the submissions made by the Core Participants and will add to the List of Issues as the evidence becomes available and Module 3 will provide an updated List of Issues in Spring 2024.
16. There are however a number of issues that I was asked to include within the Provisional List of Issues which I do not consider fall within the scope of Module 3.
 - a. Issues relating to the legal designation of long Covid as a disability and to the creation of a compensation scheme for workers in the healthcare sector who have long Covid are matters that do not relate to the 'impact of the pandemic on healthcare systems' or the response of the healthcare system to Covid-19. They are more properly characterised as issues relating to law and policy in the area of state benefits and employment matters and so are not within the scope of Module 3.
 - b. Issues relating to morgue capacity and bereavement support are matters that are not directly related to the impact on the healthcare system but seem to me to be matters of wider concern which it may be appropriate to consider elsewhere in the Inquiry's work.

Every Story Matters

17. I received a number of useful submissions, both orally and in writing, concerning the Key Lines of Enquiry (“KLOE”) which will guide the Inquiry’s work in gathering and analysing experiences shared with Every Story Matters, in particular through targeted qualitative research. The submissions will all be considered by me and the Inquiry team. More information about any changes to the KLOE in light of these submissions will be provided in the Module Lead Solicitor’s regular Update Notes.

Future hearing dates/length of hearing

18. The Module 3 public hearing is scheduled for 10 weeks and is due to commence in Autumn 2024. This is planned for after the Module 4 hearing in July 2024 and before the Module 5 (government procurement), and Module 6 (care sector) hearings which will commence in 2025. There were various, and at times competing, submissions about the length and order of the public hearings. For example, some Core Participants submitted that the 10 week hearing was not long enough in order to examine the issues and evidence within Module 3 in sufficient detail. Other Core Participants submitted that Module 3 should follow the Module 2C hearings (which will be held in Northern Ireland) and/or that Module 6 should follow straight on from Module 3.
19. I understand the reasons for these submissions but they highlight the logistical problems of timetabling an Inquiry of this size. To reorder the Modules runs the very real risk that the Inquiry will impose impossible demands upon material providers and that any Module that is brought forward will not be ready because the Module will not have received the evidence it requires for the Inquiry to conduct its work. Equally if I were to extend the length of the Module 3 hearing this would inevitably impact upon the later Modules (including those focussing on the care sector and children) and thus add to the concerns of some Core Participants that the quality of the evidence might be diminished as memories fade. It would also delay my ability to report and make recommendations, in my view unnecessarily.

20. Taking all these matters into consideration and repeating as I do that the order of the Modules does not denote a hierarchy of importance, I do not propose to change the planned timing or duration of the Module 3 hearing.

The Right Honourable Baroness Hallett

Chair of the Covid-19 UK Inquiry

9 October 2023